

5:34-2
LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS -
EXTRAORDINARY UNSPECIFIABLE SERVICES

5:34-2.1 Use of extraordinary unspecifiable services

N.J.S.A. 40A:11-5(1)(a)ii and 18A:18A-5a(2) permit contracting units to award contracts without competitive bidding for extraordinary unspecifiable services. The application of this exception for extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding wherever possible.

Amended by R.2000 d.485, effective December 4, 2000.

5:34-2.2 General requirements limiting the use of the exception

- (a) The assertion that the service can only be provided by a single contractor ("sole source") shall not be sufficient to justify avoidance of competitive bidding as an extraordinary, unspecifiable service (hereinafter referred to as EUS).
- (b) The fact that the service is in the nature of a personal, human, social or training services contract, or includes within its description such terms as "technical," "management," "consultant," or similar descriptions suggesting some special nature shall not in itself be sufficient to utilize this exception. The need for expertise, extensive training and proven reputation in the field of endeavor must be critical and essential to the project, and not merely a desire to have a reliable job performed.
- (c) The services must be of such a qualitative nature that the performance of the services cannot be reasonably described by written specifications. However, services previously bid or generally characterized as being of a continuous ongoing nature shall be subject to the presumption that such services may not be classified as an EUS, unless a contracting unit can demonstrate in writing its inability to prepare written specifications describing the qualitative nature of the performance of the services required. If written specifications can be prepared describing the qualitative nature of the performance of the services, then they shall be so written, but notwithstanding that the other criteria of the definition may be met. Contracting unit officials might also consider the use of competitive contracting pursuant to N.J.S.A. 40A:4.1(k) or 18A:18A-4.1(k).
- (d) Services that meet the requirements of EUS may not be combined with other work in a contract which is predominantly characterized as being a biddable activity so as to avoid the necessity of bidding for the work which in its own right is subject to competitive bidding.
- (e) No firm, having been previously retained under this exception to study, survey or prepare specifications for a given system, function or equipment, may be selected without competitive bidding to operate, implement or provide any material or services on the basis of intimate or specialized knowledge acquired as a result thereof.

Appropriate care shall be taken so that such a firm is not authorized to participate in competitive bidding or competitive contracting if its earlier participation would give it unfair advantage.

Amended by R.2000 d.485, effective December 4, 2000.

5:34-2.3 Procedures for implementation of the exception

- (a) If the estimated cost or price exceeds the 15 percent of the bid threshold of N.J.S.A. 40A:11-6.1a or 18A:18A-37a, quotations as to the cost or price must be solicited by the contracting agent whenever practicable, and the contract shall be awarded in accordance with the requirements of N.J.S.A. 40A:11-6.1a or 18A:18A-37a.
- (b) Before the governing body awards a contract under the EUS provisions which exceeds the bid threshold established in accordance with N.J.S.A. 40A:11- 6.1b or 18A:18A-37b, a designated administrative official of the contracting unit must file a certificate with the governing body clearly describing the nature of the work to be done, stating that it is not reasonably possible to draft specifications, describing the informal solicitation of quotations, and describing in detail why the contract meets the provisions of the statute and these rules. A mere recitation of the language in the statute shall not be sufficient for this purpose. A standard certification format is available from the Division of Local Government Services and must be utilized. The certification must be kept with the resolution awarding the contract.
- (c) The governing body, in addition to stating the supporting reasons for its action in the resolution awarding the contract, shall place a notice of the action in an official newspaper pursuant to N.J.S.A. 40A:11-5(1)(a) and 18A:18A-5(a)(2).

Amended by R.2000 d.485, effective December 4, 2000.

5:34-2.4 (Reserved)

Repealed by R.2000 d.485, effective December 4, 2000.